

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on September 3, 2015
Sacramento, California**

PRESENT:

Art Carter, Chair
Ed Lowry, Member
Judith Freyman, Member
Han Ha, Interim Executive Officer
Jeff Mojcher, Chief Counsel
Ursula Clemons, Presiding Administrative Law Judge
Neil Robinson, Presiding Administrative Law Judge
Autumn Gonzalez, Industrial Relations Counsel
Aaron Jackson, Industrial Relations Counsel
JK Elmendorf, Administrative Law Judge
Lee Berlin, Staff Services Manager

MINUTES OF AUGUST 20 , 2015 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the August 20, 2015 Board meeting. Chair Carter seconded. The Board voted to approve the draft minutes of the August 20, 2015 Board meeting.

NEW BUSINESS:

(The Appeals Board hears and discusses new reports presented by staff.)

PROPOSAL TO HOLD BOARD MEETING IN WEST COVINA OFFICE OCTOBER 15, 2015

ACTION: The Board decided hold its October 15 meeting at the West Covina office at 100 N. Barranca Street, Suite 410. The Board members and legal staff will travel to West Covina for the meeting and also meet with the office team. The meeting can also be accessed telephonically at the Sacramento office.

**DISCUSSION OF POSSIBLE VIDEO AND PRINTED OUTREACH MATERIALS TO
INTRODUCE OASIS SYTEM AND EXPLAIN APPEALS PROCESS**

ACTION: Member Freyman requested that the Board consider making a video presentation in addition to printed materials to help explain the Board's appeal process and the new OASIS system. She noted that some examples of instructional videos are posted on the State of Washington appeals board site.

OLD BUSINESS:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

ACTION: No report.

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board)

ACTION: No report.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: No report.

BOARD MEMBERS' REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

ACTION: Member Lowry reported that he will attend a vendor meeting for the OASIS project in the West Covina office on September 16. Executive Officer Ha and Business Lead Neil Robinson will also attend the meeting with members of the West Covina team.

Member Freyman shared a summary of a recent report from the Little Hoover Commission regarding unanticipated consequences of the Bagley-Keene Open Meeting Act and the Brown Act.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

OPERATIONS UPDATE:

ACTION: No report.

STAFF REPORTS:

(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

OASIS PROJECT:

ACTION: Neil Robinson reported that the OASIS team has been working on the intake screen and then will move on to calendaring and scheduling.

RULEMAKING:

ACTION: Counsel Gonzalez reported that the two rulemaking packages are expected to finish review by the Department at the end of the week.

LITIGATION UPDATE:

ACTION: Chief Counsel Mojcher reported that the Morrow Meadows Superior Court case has been withdrawn by the employer.

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

PUBLIC COMMENT:

(Public comment will be entertained during discussion of each agenda item of the Open Meeting.)

ACTION: No report.

The Board recessed to its closed session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

CGK INC. DBA PREMIER STEEL FABRICATION, 13-R4D4-0518 AND 0519

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

DAVIDSON ENTERPRISES, INC., 14-R4D7-3738 THROUGH 3743

ACTION: The Board did not act on this matter. It will appear on the agenda for the September 17 Board meeting.

PAR ELECTRICAL CONTRACTORS INC., 14-R3D1-0310

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

REALTIME STAFFING SERVICES INC. DBA SELECT STAFFING, 12-R4D3-3687 THROUGH 3689

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

REGINO AMILCAR RODRIGUEZ, 14-R4D3-1423 THROUGH 1425

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

PETITIONS FOR RECONSIDERATION:

ACTION METAL RECYCLING, INC., 13-R2D2-1125 ~ 1126

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to grant this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to grant this Petition for Reconsideration.

CHARLES PANKOW BUILDERS, LTD., 13-R4D1-1759

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to deny this Petition for Reconsideration.

NATHAN AHDOOT dba SUMMITRIDGE BEVERLY HILLS LLC, 12-R4D1-9154

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to deny this Petition for Reconsideration.

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

MASTER ROOFING SYSTEMS, INC., 14-R1D1-3619

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

SECURITY PAVING COMPANY, INC., 14-R4D7-2442

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature as amended. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature as amended.

**SHIMMICK CONSTRUCTION CO., INC/OBAYASHI CORP., 11-R3D1-2562 ~ 2570
SHIMMICK CONSTRUCTION CO., INC/OBAYASHI CORP., 12-R3D1-0781**

ACTION: Member Lowry moved that the Board vote to approve these draft Denials of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve these draft Denials of Petition for Reconsideration for signature.

ORDERS DISMISSING APPEAL:

PENNYSAVER USA PRINTING, LLC, 15-R3D3-1327 THROUGH 1329

ACTION: Member Lowry moved that the Board approve this Order Dismissing Appeal from Administrative Law Judges. Member Freyman seconded. The Board voted to approve this Order Dismissing Appeal from Administrative Law Judges.

MATTERS INVOLVING LATE APPEALS:

(These are matters such as orders dismissing appeal, orders granting leave to file late appeal and orders denying leave to file late appeal)

ORDER DENYING LATE APPEAL

BODEGA LATINA CORPORATION, 15-R4D4-9128

ACTION: Member Lowry moved that the Board approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge.

MATTERS HELD OVER FROM PREVIOUS MEETINGS:

(If the Board is unable to conclude its deliberations and/or if any matter(s) is (are) put over from a previous meeting, they will be further discussed.)

MATTERS PENDING RECONSIDERATION:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

B.A.R.T., 11-R2D2-3137 THROUGH 3139 (ER)

CHEVRON U.S.A. INC., 13-R6D3-0655 THROUGH 0662

CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038

CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364

DIONYSUS DREAM INC., DBA NEWPORT MESA CARWASH & SERVICE,
15-R6D5-9087

ECHO ALPHA INC. ET AL, 14-R3D1-0802 THROUGH 0804

ACTION: The Board discussed this matter.

EKEDAL CONCRETE, INC., 13-R3D1-0131 THROUGH 0133

GOLDEN STATE WARRIORS, 15-R1D4-9060

L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822

McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406

McCARTHY BUILDING CO., INC., 12-R1D4-3458

ACTION: The Board discussed this matter.

MCM CONSTRUCTION, INC., 13-R1D2-3851 THROUGH 3854

NATIONAL DISTRIBUTION CENTERS, LP, 12-R6D2-0391

GONZALO OLASCOAGA DBA GONZALO OLASCOAGA, 13-R6D5-2097
AND 2098

SIERRA FOREST PRODUCTS, 09-R2D5-3979

SKYLINE HOMES, INC., 15-R3D3-9035

ACTION: Member Lowry moved that the Board vote to issue an Order of Remand in this matter. Member Freyman seconded. The Board voted to issue an Order of Remand in this matter.

TRI-STATE STAFFING, 12-R6D2-0378

UNITED PARCEL SERVICE, 14-R2D1-1779
W.A. RASIC CONSTRUCTION, INC., 13-R3D1-2952

LEGISLATION:

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

1. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
3. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
4. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
5. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
6. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
7. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
8. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
9. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
10. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
11. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
12. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
13. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
14. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)

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15. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
16. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
17. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575 (12-R5D1-337)
18. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
19. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 34-2014-80001749 (2008-R2D1-3414 THROUGH 3418)
20. SHIMMICK-OBAYASHI, 34-2014-80001750 (08-R3D3-5023 THROUGH 5025)
21. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)
22. BRUNTON ENTERPRISES DBA PLAS-TAL MFG CO., 34-2014-80001817 (09-R6D2-2238 ~ 2241)
23. WEST VALLEY CONSTRUCTION, INC., 34-2014-80001832 (12-R2D5-3526)
24. BARNARD IMPREGILO HEALY JV, CPF-14-513697 (14-R5D1-9013)
25. TL PAVLICH CONSTRUCTION, INC., BS14-9660 (11-R3D6-1303 THROUGH 1310)
26. DAVIS DEVELOPMENT CO., 34-2014-80001892 (10-R3D1-3360 THROUGH 3362)
27. MORROW MEADOWS CORP., BS151385 (09-R3D3-2295)
28. FEDEX GROUND PACKAGING SYSTEM, INC., CIVDS1415696 (13-R3D1-1220)
29. KEY ENERGY SERVICES, INC., S-1500-CV-283958, EB (13-R4D3-2239 ~ 2242)
30. KDTD, INC. DBA KD DEVELOPMENT, INC., 37-2015-00003550-CU-WM-CTL (14-R3D2-1935 & 1936)
31. HHS CONSTRUCTION, 34-2015-80002052 (12-R3D2-0492 THROUGH 0497)
32. MARIA DE LOS ANGELES COLUNGA dba MERCED FARM LABOR, 15CV-00945 (08-R2D1-3093 ~ 3098)
33. STANISLAUS FOOD PRODUCTS CO., 34-2015-80002087 (13-R2D4-0572 ~ 0574)

APPELLATE COURT:

1. XL CONSTRUCTION, C074514, 34-2009-80000300 (08-R1D2-1191 THROUGH 1193)
1. AC TRANSIT, A142799, RG13-687314 (08-R1D4-0135)
3. THYSSENKRUPP ELEVATOR CORPORATION, C077115, 34-2013-80001456 (11-R2D1-2217 ~ 2219)
4. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, C078953, 34-2011-80000965, (10-R6D2-0188 THROUGH 0191)

ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

ADVANTAGE RESOURCING NORTH AMERICA INC, 14-R2D1-4010
ALEXANDER BULBS, INC., 15-R6D2-2100 AND 2101
ALLEY AND CO. HEATING/AIR, INC., 14-R2D1-3675
AMCOR FLEXIBLES, 15-R4D4-0706 THROUGH 0708
AMERICAN NONWOVENS, 15-R4D4-2309 AND 2310
AMERI-SEAL, INC., 14-R4D3-3118
A.M.G. SEWING, INC., 15-R6D5-0962 THROUGH 0964
ANDRE ABOOLOIAN, MD., INC., 15-R4D1-1646 AND 1647
ARCHER INSTALLATIONS & SOLUTIONS, INC., 14-R4D1-2766
ARROTIN PLASTIC MATERIALS INC., 15-R3D3-1966
BROOKVALE INTERNATIONAL, 15-R3D5-2536
B W DRYWALL, INC., 15-R3D2-0865
CAL ROOFING, INC., 15-R3D1-0627 THROUGH 0630
CERUTTI & SONS TRANSPORTATION CO. INC., 14-R2D5-4058
CITISTAFF SOLUTIONS, INC., 15-R4D4-0059
CITY OF ANAHEIM, ANAHEIM CONVENTION CENTER, 12-R3D1-2363
CKKM INC DBA DUCT PRODUCT, 15-R3D3-1867 THROUGH 1871
COSMETIC GROUP USA, INC., 15-R4D3-1034 AND 1035
COUNTY OF SAN DIEGO SHERIFF'S DEPT., 15-R3D2-1986
DELMAR VAN DAM DBA HIGH DESERT DAIRY, 14-R4D3-0419 THROUGH 0422
DOORS PLUS, INC., 15-R6D1-1972 AND 1973
DRILL TECH DRILLING AND SHORING INC, 14-R5D1-3543
EAST WHITTIER CITY SCHOOL DISTRICT, 15-R4D4-0468
EXXON MOBIL PIPELINE COMPANY, 14-R6D4-3544 AND 3545
FABRICA INTERNATIONAL, 14-R3D1-3135 AND 3136
FS PRECISION TECH LLC, 15-R6D2-0685 THROUGH 0690
GARFIELD BEACH LLC, 15-R3D3-2088
GAYTAN FOODS, 15-R4D4-0592 AND 0593

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GRANITE DEPOT, 15-R6D5-2043 AND 2044
LOUIS C. GUEVARA DBA L L CHRISTOPHER MASONRY, 15-R6D5-2599 AND 2600
HAMSCO CONSTRUCTION, INC., 14-R4D3-2885 AND 2886
HAMSCO CONSTRUCTION, INC., 14-R4D3-2887 AND 2888
HEMME HAY AND FEED, INC., 15-R4D3-0938 AND 0939
HK2 OF ROWLAND HEIGHTS, LLC DBA HK2 FOOD DISTRICT, 15-R4D4-1145 AND 1146
BRENT HORNSBY, 15-R2D1-0370 THROUGH 0373
J&J SNACK FOODS OF CALIFORNIA, 15-R4D1-1776 AND 1777
J T WIMSATT, 14-R4D1-2339
KAJIKO NURSERY INC, 15-R6D1-1822 THROUGH 1827
KALIFORNIA BUSINESS STAFFING, INC., 14-R2D4-3704 AND 3705
JOSEPH KIRK DBA JOSEPH KIRK HOME SERVICES, 15-R6D7-1086 AND 1087
LA CITY WATER & POWER, 14-R4D1-2923 THROUGH 2924
LAUSD DBA BELVEDERE MIDDLE SCHOOL, 15-R4D1-1074 THROUGH 1076
LINDEN STEEL & CONSTRUCTION, INC., 15-R2D3-2014 AND 2015
MENZIES AVIATION, 13-R4D1-2340 THROUGH 2343
MODULAR METAL FABRICATORS INC., 15-R6D2-1154 THROUGH 1157
KRISHLANI MULIA DBA KRIS CONSTRUCTION, 14-R6D7-3695 AND 3696
OLIVE VALLEY, INC., 15-R1D2-1205 AND 1206
PALEX METALS INC., 15-R6D1-1636 THROUGH 1638
PALM SPRINGS HOSPITALITY LLC DBA HARD ROCK HOTEL PALM SPRINGS, 15-R3D3-1288 THROUGH 1293
PANJIA, INC. DBA PANJIA OUTDOORS, 15-R6D5-2429
PANNU DENTAL, 15-R1D2-2552
PHILLIPS 66 COMPANY (cited as PHILLIPS 66), 14-R6D4-2263
PHILLIPS 66 COMPANY (cited as PHILLIPS 66), 14-R6D4-2562 THROUGH 2565
QUARTZ OF SOUTHERN CALIFORNIA INC DBA QUARTZ DEALER DIRECT, 14-R3D1-2976
RAMIRO LOERA MARTINEZ & ASSOCIATES, 15-R6D5-0895 THROGUH 0898
RAYMOND E ENKEBOLL DESIGNS, 15-R6D2-1978 AND 1978
ROBERTS CUSTOM ROOFING, 14-R3D2-1104
SAFEWAY, INC., 14-R2D4-3150 THROUGH 3153
SAVANT CONSTRUCTION, INC., 14-R3D1-3055
SG FRAMING, 14-R3D1-3157 THROUGH 3160
SHAPSIS CONSTRUCTION, INC., 15-R4D1-2415 THROUGH 2418
SIERRA PACIFIC INDUSTRIES, 15-R2D3-2173
STRATEGIC MATERIALS INC, 14-R2D1-3676
SWIFT PORK COMPANY (previously JBS USA LLC), 15-R4D4-0704 AND 0705
THE PARTY CONCIERGE, INC., 14-R2D1-3170
THERMO POWER INDUSTRIES, 14-R3D5-2957
TI SPECIALTIES, 14-R3D1-2953
TROON GOLF, LLC, 15-R3D3-2435
TSUKURU USA CORP., 14-R3D5-1384
T & T TRUCKING INC., 13-R3D3-1754 THROUGH 1756
UC LOS ANGELES DEPT OF CHEMISTRY AND BIOCHEMISTRY, 15-R4D1-0943
UPS REGIONAL AIR HUB, 15-R4D4-0404
VALLEYCREST TREE CARE SERVICES, INC., 14-R3D3-3117
WASHINGTON IRON WORKS, 15-R3D2-1251 AND 1252
WEKA INC., 14-R3D3-3330
WINDSOR GARDENS CONVALESCENT HOSPITAL INC., 15-R3D5-1511

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WM. BOLTHOUSE FARMS, INC., 15-R4D7-2486
WRIGHT ELECTRIC, 15-R2D3-2530

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended.

PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 12:10 p.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned at 12:11 p.m.